

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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HSBC BANK USA, NATIONAL ASSOCIATION,
Plaintiff,
v.
SFR INVESTMENTS POOL 1, LLC.,
Defendants.

Case No.: 2:16-cv-02762-RFB-NJK

ORDER

I. INTRODUCTION

Before the Court is Defendant SFR Investments Pool 1, LLC’s (“SFR”) Motion for Default Judgment. ECF No 45. For the following reasons, the Court grants this motion.

II. PROCEDURAL BACKGROUND

HSBC Bank USA, National Association (“HSBC”) filed its complaint against Defendants on December 2, 2016. ECF No. 1. On January 27, 2017, SFR answered and asserted cross-claims against Marilu Aguilera. ECF No. 24. Aguilera was served with SFR’s Answer with cross-claims on April 25, 2017. ECF No. 27. On May 30, 2017, this SFR filed a Motion for Entry of Clerk’s Default as to Marilu Aguilera and it was entered on May 31, 2017. ECF Nos. 27, 28. On December 12, 2018, this Court entered stipulation of dismissal with prejudice as to HSBC, SFR, and Belcrest Homeowners Association; this did not affect the cross-claims against Aguilera. ECF No. 44. On May 7, 2020, SFR filed a Motion for Default Judgment against Aguilera and there was no opposition filed. ECF Nos. 45, 46.

III. LEGAL STANDARD

The granting of a default judgment is a two-step process directed by Rule 55 of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 55; Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). The first step is an entry of clerk's default based on a showing, by affidavit or otherwise, that the party against whom the judgment is sought "has failed to plead or otherwise defend." Fed. R. Civ. P. 55(a). The second step is default judgment under Rule 55(b), a decision which lies within the

1 discretion of the Court. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). Factors which a
 2 court, in its discretion, may consider in deciding whether to grant a default judgment include: (1)
 3 the possibility of prejudice to the plaintiff, (2) the merits of the substantive claims, (3) the
 4 sufficiency of the complaint, (4) the amount of money at stake, (5) the possibility of a dispute of
 5 material fact, (6) whether the default was due to excusable neglect, and (7) the Federal Rules'
 6 strong policy in favor of deciding cases on the merits. Eitel, 782 F.2d at 1471–72.

7 If an entry of default is made, the Court accepts all well-pleaded factual allegations in the
 8 complaint as true; however, conclusions of law and allegations of fact that are not well-pleaded
 9 will not be deemed admitted by the defaulted party. DirecTV, Inc. v. Hoa Huynh, 503 F.3d 847,
 10 854 (9th Cir. 2007). Additionally, the Court does not accept factual allegations relating to the
 11 amount of damages as true. Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977). Default
 12 establishes a party's liability, but not the amount of damages claimed in the pleading. Id.

13 IV. DISCUSSION

14 In considering the seven Eitel factors, the Court finds default judgment against Marilu
 15 Aguilera is warranted. The first and sixth factors favor granting default judgment because the
 16 Cross-Defendant failed to defend—or appear at all in this matter—since being served with the
 17 summons and SFR's Answer. Aguilera's failure to appear for the past four years prejudices SFR
 18 by preventing it from determining injunctive relief against Aguilera. Further, Aguilera's failure to
 19 appear for a substantial period of time demonstrates the lack of excusable neglect. And while the
 20 seventh factor generally counsels against the granting of default judgment, Aguilera's failure to
 21 appear prevents the Court from determining the cross-claims on its merits.

22 The second and third factors also favor a grant of default judgment. SFR seeks quiet title
 23 and injunctive relief against Aguilera's. There are sufficient exhibits attached to this instant motion
 24 demonstrating SFR is entitled to the relief requested. Thus, SFR has demonstrated its claims are
 25 meritorious.

26 Finally, there is no money at stake to counsel against the grant of default judgment. Thus,
 27 the Court finds the Eitel factors favor the grant of default judgment against Cross-Defendant.

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V. CONCLUSION

IT IS THEREFORE ORDERED that Defendant SFR Investments Pool 1, LLC's Motion for Motion for Default Judgment (ECF No. 45) is GRANTED.

The Clerk of the Court is instructed to enter judgment accordingly and close this case.

DATED: March 31, 2021.

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**RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE**